

HOUSE BILL REPORT

HB 1674

As Reported by House Committee On:
Technology & Economic Development
Appropriations Subcommittee on General Government

Title: An act relating to increasing the regulatory oversight and accountability of the office of minority and women's business enterprises.

Brief Description: Increasing the regulatory oversight and accountability of the office of minority and women's business enterprises.

Sponsors: Representatives Santos, Morris and Maxwell.

Brief History:

Committee Activity:

Technology & Economic Development: 2/13/13, 2/20/13 [DPS];
Appropriations Subcommittee on General Government: 2/23/13 [DPS(TED)].

Brief Summary of Substitute Bill

- Requires the Office of Minority and Women's Business Enterprises (OMWBE) to impose a penalty if a person, firm, corporation, or business commits a statutorily prohibited activity.
- Establishes an investigation unit within the OMWBE.
- Adds accountability provisions for the OMWBE.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Morris, Chair; Habib, Vice Chair; Smith, Ranking Minority Member; Crouse, Assistant Ranking Minority Member; Dahlquist, Hudgins, Kochmar, Magendanz, Maxwell, Morrell, Stonier, Tarleton, Vick, Walsh, Wylie and Zeiger.

Staff: Jennifer Thornton (786-7147).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Office of Minority and Women's Business Enterprises (OMWBE) was created in 1983 with the statutory purpose of providing minority and women-owned business enterprises (MWBE) the maximum practicable opportunity for increased participation in public works contracts and public contracts for goods and services. Among other things, the OMWBE is required to:

- develop and implement programs and a comprehensive plan to provide an opportunity for qualified MWBE to participate in public works and in supplying goods and services to state agencies and educational institutions;
- identify barriers to equal participation by qualified MWBE in state agency and educational contracts;
- establish annual overall goals for MWBE participation for each state agency and educational institution;
- develop and maintain a central MWBE certification list for state agencies and educational institutions; and
- submit an annual report to the Governor and the Legislature outlining the progress in implementing the program.

The OMWBE is the sole authority for certifying minority, women-owned, and socially and economically disadvantaged businesses throughout the State of Washington. The programs for which the OMWBE certifies businesses include:

- Washington State Minority and Women's Business Enterprise Program;
- Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) program; and
- Federal Aviation Administration Airport Concessionaire DBE program.

Between April and November of 2012, KING 5 issued a series of media reports pertaining to the OMWBE certifications for participation in the DOT DBE program.

Summary of Substitute Bill:

The OMWBE is required to annually identify the state agencies and educational institutions utilizing the lowest percentage of minority and women-owned contractors, awarding the lowest percentage dollar value of contracts to minority and women-owned contractors, and performing significantly below their established goals.

The OMWBE must meet with each identified agency to review its plan and identify tools and actions for increasing participation.

The language permitting the OMWBE to impose a penalty if a person, firm, corporation, or business does not comply with any of the OMWBE's statutory provisions or contract requirements is modified so that:

- If the lack of compliance pertains to anything other than a statutorily prohibited activity, the OMWBE retains authority to determine if it will impose a penalty.
- If a prohibited activity is committed, the OMWBE must impose one or more of the following penalties: withholding payment, decertifying the contractor, debarring the contractor, terminating the contract, or subjecting the contractor to civil penalties.

- If there are willful, repeated violations, the contractor must be debarred from state contracting for three years, in addition to any other penalties imposed. A willful violation includes a conscious or deliberate false statement, misrepresentation, omission, or concealment of a material fact with the intent of impacting benefits that are awarded.

A unit is established within the OMWBE to detect and investigate fraud and violations. Qualified personnel are to be employed, and the director and unit personnel are authorized to receive criminal record information associated with investigations. The director or director's designee may subpoena witnesses, and are granted enforcement authority under the Administrative Procedures Act. Funds collected by imposing civil penalties are deposited in the OMWBE's account in the custody of the State Treasurer.

The investigation unit must annually conduct a site review of a minimum of 3 percent of contractors, and prioritize and conduct thorough investigations of businesses when identified by an external complaint or internal concerns and determined to be the highest priority for the agency.

The OMWBE must incorporate information identified during its state agency reviews and the investigation unit's reviews into their currently required annual reports.

Substitute Bill Compared to Original Bill:

The definition of contractor is expanded to include subcontractors.

The OMWBE is required to annually identify the state agencies and educational institutions that:

- have the lowest 20 percent utilization rate of minority and women-owned contractors, as a percentage of all contracts issued by the agency;
- award the lowest 20 percent dollar value of contracts to minority and women-owned contractors, as a percentage of the dollar value of all contracts issued by the agency; and
- perform significantly below their established goals.

The OMWBE must meet with each identified agency to review its plan and identify tools and actions for increasing participation.

The investigation unit must annually:

- conduct a site review of a minimum of 3 percent of contractors;
- respond to all external agencies submitting a complaint;
- prioritize and conduct thorough investigations of businesses when identified by an external complaint and determined to be the highest priority for the agency; and
- prioritize and conduct thorough investigations of businesses internally identified and determined to be the highest priority for the agency.

The OMWBE must incorporate information identified during its state agency reviews and the investigation unit's reviews into their currently required annual reports.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Without clearly established consequences, the ability for the OMWBE to investigate fraud means nothing. Last year during a committee presentation, members were appalled at the agency's lack of accountability. Steady effort has been made under the OMWBE's new director, and this bill creates additional tools and mandates. Many DBE firms and other small businesses are struggling. They have been left at a disadvantage by fraudulent DBEs. There are supposed to be checks in the field. There are fraudulent firms laughing all the way to the bank. Tax paying businesses are going under, and millions of our dollars are leaving the state. People need to be held accountable. The DBEs have been bringing this forward for years, but it has been falling on deaf ears. It is a shame to have to bring up the need to prosecute fraud, but this legislation is needed. The OMWBE desperately needs the power and authority to remove firms. This will be a great service to the community.

There has also been a lack of effort made by some state agencies. While this bill addresses fraud, another big concern is the limited dollars state agencies are contracting to minorities. The numbers show the underrepresentation. As many of the participating businesses are small, they are subcontractors. They should be reflected in the bill language.

(Opposed) None.

Persons Testifying: Representative Santos, prime sponsor; Frank Lemos; Charles Peterson; Jim Medina; Elton Mason, Washington State Trucking; Dan Seydel; Grover Johnson, National Association of Minority Contractors; and Eddie Rye Jr, Community Coalition for Contracts and Jobs.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT

Majority Report: The substitute bill by Committee on Technology & Economic Development be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hudgins, Chair; Parker, Ranking Minority Member; Buys, Chandler, Dunshee, Hunt, Pedersen and Springer.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor.

Staff: Danielle Cruver (786-7157).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government Compared to Recommendation of Committee On Technology & Economic Development:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) There was major public outcry for more investigations into fraud. The previous scandal brought shame to the OMWBE. The additional enforcement language is needed to prosecute fraud. When one company defrauds the system, it hurts all certified contractors. The agency needs authority to prosecute fraud.

(Opposed) None.

Persons Testifying: Frank Lemos, Tabor 100; Jim Medina, Grover Johnson, and Elijah Mason, National Society of Minority Contractors; and Elton Mason, Washington State Trucking.

Persons Signed In To Testify But Not Testifying: None.